

1:20-9. Confidentiality; Access to and Dissemination of Disciplinary Information

(a) Confidentiality. Prior to the filing and service of a complaint in a disciplinary matter, or a motion for final or reciprocal discipline, or the approval of a motion for discipline by consent, the disciplinary matter and all written records received and made pursuant to these rules shall be confidential, except that the pendency, subject matter, and status of a grievance may be disclosed by the Director if:

- (1) the respondent has waived confidentiality; or
- (2) the proceeding is based on allegations of reciprocal discipline or a guilty plea or conviction of a crime, either before or after sentencing; or
- (3) there is a need to notify another person or organization, including the Lawyers' Fund for Client Protection, in order to protect the public, the administration of justice, or the legal profession; or
- (4) the Supreme Court has granted an emergent disciplinary application for relief; or
- (5) the matter has become common knowledge to the public.

(b) Public Proceedings. All proceedings shall be public except:

- (1) as otherwise provided by paragraph (a); or
- (2) prehearing conferences; or
- (3) deliberations of the trier of fact, Board or Supreme Court; or
- (4) information subject to a protective order.

(c) Public Records.

(1) Unless a protective order has been issued, all documents and records filed subsequent to the filing and service of a complaint, a motion for final or reciprocal discipline or the approval of a motion for discipline by consent, shall be available for public inspection. Inspection shall be available by appointment at the office of the body where the matter is then pending.

(2) In the event an attorney has been temporarily suspended for disciplinary reasons, the motion papers, any response and any orders issued by the Board or the Court shall be available to the public by their respective offices. Unless the Court otherwise orders, all other records regarding emergent applications, including but not limited to those for temporary suspension (either for disciplinary reasons, failure to pay disciplinary costs, failure to pay fee arbitration determinations or settlements or otherwise), license restrictions, conditions of practice, transfer to temporary disability-inactive status, shall be confidential, except for orders issued by the Supreme Court.

(3) There shall be no private discipline. Private reprimands issued prior to the effective date of this rule shall remain confidential.

(4) Ethics Committees, Office of Attorney Ethics or the Board may impose a reasonable charge for the actual cost of reproducing public documents.

(5) The following records are also public for purpose of inspection: District Ethics Committee Manual and District Fee Arbitration Manual. These manuals may be inspected at the Office of Attorney Ethics, the Disciplinary Review Board and the secretaries of the respective Ethics Committees and Fee Committees.

(d) Referral to Admissions/Disciplinary Agencies. Whenever an attorney-at-law of this state is also admitted, or has applied for admission, to another jurisdiction, the Director may refer information concerning a pending or completed investigation or proceeding regarding that attorney to such admission or disciplinary agency. Such transmittal by the Director shall be made on notice to the attorney and, if the information submitted is confidential, shall be accompanied by a directive that the information submitted remain confidential and be used solely for admissions or disciplinary purposes in that jurisdiction.

In those cases in which an admission or disciplinary agency in another jurisdiction initiates a request for information, that agency shall certify that its request for information is made in furtherance of an ongoing investigation or proceeding involving that attorney.

(e) Disclosure of Evidence of Criminal Conduct; All Other Disclosure.

(1) Prior to the filing and service of a complaint, the Director may refer a matter to law enforcement authorities if criminal conduct may be involved and the respondent has been temporarily suspended. A copy of the letter of referral shall be served on the respondent. Where criminal conduct may be involved but where the respondent has not been temporarily suspended or served with a complaint, the Director shall, prior to such referral, give 10 days written notice to the respondent of the intention to make a referral. The respondent may, within said period, apply to the Board for a protective order based on good cause shown.

(2) In all other cases, including cases where civil or criminal subpoenas have been issued to disciplinary personnel, the Board may authorize the referral of any confidential documentary information to the appropriate authority only for good cause shown. When a requesting authority shall seek such information, it shall issue its subpoena, which shall be transmitted to the Board or shall file a motion seeking disclosure with the Board, on 10 days notice to the respondent and the Director, both of whom shall be given an opportunity to be heard.

(f) Proceedings Alleging Disability. Proceedings for transfer to or from disability inactive status are confidential. All orders transferring an attorney to or from disability inactive status are public.

(g) Protective Orders. Protective orders may be sought to prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party or respondent. An

application for a protective order shall be made by the investigator, presenter, ethics counsel or respondent. On application or on its own motion, and for good cause shown, the Supreme Court, the Board, or the trier of fact may issue the protective order. A copy of any protective order entered shall be sent promptly to the Director, the secretary of any appropriate Ethics Committee, all parties, Board Counsel and the Clerk of the Supreme Court. The trier of fact or the Board may also direct that implementation of the protective order include a requirement that any hearing on the matter be conducted in such a manner as to preserve the confidentiality of the information that is the subject of the order.

(h) Duty to Maintain Confidentiality. All disciplinary system officials, employees and all participants in a proceeding under these rules shall maintain the confidentiality mandated by this rule, including compliance with any protective order.

(i) Records Retention, Expungement and Reporting. The Clerk of the Supreme Court shall maintain permanently all disciplinary and disability files processed by the Supreme Court for decision including, but not limited to, all files resulting in the imposition of final or temporary discipline or the transfer to disability-inactive status, and all applications for reinstatement. Chief Counsel to the Disciplinary Review Board shall permanently maintain all ethics files previously resulting in private reprimands and admonitions issued by the Board, and shall maintain files of all ethics and fee arbitration appeals processed to the Board for a period of three years after the matter is terminated or for one year after the date of death of the attorney, whichever is earlier. All Ethics Committees shall maintain files for one year after the date a matter is terminated or after the attorney's death. All files maintained by the Office of Attorney Ethics and all other files maintained by the Disciplinary Review Board may be destroyed after five years following the date the matter is terminated or after one year following the date of the attorney's death. However, Chief Counsel to the Disciplinary Review Board and the Director of the Office of Attorney Ethics shall permanently maintain a summary of all docketed matters processed by each office containing the name of the respondent and any grievant or client, a brief summary of the nature and disposition of the matter and the date the case was opened and closed by their respective offices.

Except with respect to any application by an attorney for appointment to or employment by a judicial branch of government or a law enforcement or corrections agency, the matter shall, after the time herein specified for destruction of the file, be deemed expunged and any agency response to an inquiry requiring a reference to such matter shall state that there is no record of the filing of cases that are over five years old where the matter is dismissed or terminated other than by discipline or transfer to disability inactive status. Except with respect to inquiries by the judicial branch of government, or a law enforcement or corrections agency, the respondent may answer any inquiry requiring a reference to a destroyed file by stating that the grievance was dismissed and thereafter expunged pursuant to court rule.

(j) Law Firm/Public Agency Notice of Complaint. Unless the respondent is the sole proprietor of a law firm, an Ethics Committee or the Office of Attorney Ethics shall send promptly to the law firm of which the respondent is a member or by which employed or the public agency by which employed, a copy of every complaint filed and served by that entity or motion for final or reciprocal discipline or discipline by consent.

(k) Notice to National Lawyer Regulatory Data Bank. The Clerk of the Supreme Court shall transmit promptly notice of all discipline, whether temporary or final, imposed on an attorney, transfers to or from disability inactive status, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

(l) Public Notice of Discipline Imposed. The Clerk of the Supreme Court shall cause promptly notices of all discipline, whether temporary or final, imposed against an attorney, transfers to or from disability inactive status and reinstatements to be published in the official newspaper designated by the Supreme Court.

(m) Notice to the Courts. The Clerk of the Supreme Court shall promptly transmit a copy of all orders of discipline, whether temporary or final, transfers to or from disability inactive status and reinstatements to all Assignment Judges, to the Presiding Judge for Administration of the Appellate Division, the Presiding Judge of the Tax Court of New Jersey, and to the Clerk of the United States District Court for the District of New Jersey. If a respondent has been transferred to disability inactive status or is otherwise unable to comply with the requirement of R. 1:20-20, the Office of Attorney Ethics or the County Bar Association shall, where necessary, request the Assignment Judge of the county in which the respondent practiced law to designate a practicing attorney member of the bar of that county to take such action pursuant to R. 1:20-19 as may be necessary to protect the interests of the respondent and the respondent's clients.

(n) Notice to Disciplinary Agencies. The Office of Attorney Ethics shall promptly transmit notice of final discipline and transfers to disability inactive status to the disciplinary enforcement agency of every other jurisdiction in which the respondent is known to have been admitted.

(o) Annual Reports. The Office of Attorney Ethics and the Board shall each annually publish reports to the Supreme Court concerning their respective activities.

Note: Former R. 1:20-9 redesignated R. 1:20-12 adopted January 31, 1995 to be effective March 1, 1995; paragraph (k) amended July 10, 1998 to be effective September 1, 1998; paragraphs (d) and (g) amended July 5, 2000 to be effective September 5, 2000.